

REMARKS

In the Office Action, claims 20-21 and 29-31 are rejected under 35 U.S.C. §112, second paragraph; claims 7-12, 18, 20, 25, 27, 28 and 30-33 are rejected under 35 U.S.C. §102; claims 1-6, 13-17, 19, 21-24, 26 and 29 are rejected under 35 U.S.C. §103; and claims 1-33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting. Claims 1, 7, 13, 18, 20, 21, 25, and 28-31 have been amended. Applicants believe that the rejections have been overcome in view of the amendments and the reasons set forth below.

In the Office Action, claims 20-21 and 29-31 have been rejected under 35 U.S.C. §112, second paragraph. With respect to the issues regarding claims 20, 21, 29 and 30, these claims have been amended in response to same. Applicants note for the record that the amendments in response to this rejection were made for clarification purposes and not intended to narrow and/or disclaim any claimed subject matter in view of same.

The Patent Office rejects claim 31 and alleges that the claim term “large” is indefinite. Applicants believe that the Patent Office’s position is improper as the specification provides sufficient support for this term. For example, the specification provides that the interior of the dried pet food product can have a large number of microscopic air pockets. This cellular structure is apparent when the product is broken apart and the inner surface is examined. The inner surface has a fine sandpaper-like appearance. Thus, the interior of the structure has a dense foam-like structure. This should be contrasted with a laminar-like structure. This cellular structure can improve the tartar reducing properties of the product. See, Specification, page 8, lines 24-30. In view of same, one skilled in the art should readily understand the scope and meaning of the claim term “large” as defined in the claim and as further supported in the specification as discussed above.

Based on at least these reasons, Applicants believe that the claimed invention satisfies the requirements pursuant to 35 U.S.C. §112, second paragraph. Therefore, Applicants respectfully request that this rejection be withdrawn.

In the Office Action, claim 1-33 are rejected under 35 U.S.C. §102 or §103. More specifically, claims 7-12, 18, 20, 25, 27, 28 and 30-33 are rejected as anticipated in view of EP0645095 (“*Collings*”); and claims 1-6, 13-17, 19, 21-24, 26 and 29 are rejected as rendered

obvious in view of Collings and U.S. Patent No. 5,431,297 ("*Hand*"). Applicants believe that the anticipation and obviousness rejections have been overcome.

Of the pending claims at issue, claims 1, 7, 13, 18, 20, 21, 25, 28, and 31 are the sole independent claims. Claims 1, 7, 13, 18, 28 and 31 is directed to a dried pet food; claim 20 is directed to a method of reducing calculus and plaque build-up on a pet's teeth; claim 21 is directed to a pet food; and claim 25 is directed to a method for making a dry pet food. Each of the independent claims has been amended to include, in part, that a pet food has a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³ as supported in the specification, for example, on page 5, at lines 4-5.

The present invention provides a dry pet food that can reduce tartar when chewed by the pet. Applicants have found that by reducing the density and/or increasing the size of the pet food product, that the resultant product can remove more plaque and tartar build-up than similar pet food products. This can result even if the pet food product does not include a texturizing agent (i.e., humectant). See, Specification, page 3, lines 4-7; page 4, lines 26-30.

Applicants believe that the cited art is deficient with respect to the claimed invention. With respect to Collings, this reference fails to disclose or suggest a number of features as claimed. For example, Collings is deficient with respect to a pet food product that has pet food product characteristics as claimed, such as a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³. Clearly, Collings provides a product density that is outside of the claimed density range based on, for example, what Collings discloses at page 6 in lines 10 and 11.

Further, the claimed density features are not an inherent property of the dog food product as disclosed or suggested in Collings contrary to what the Patent Office seems to suggest. Indeed, the primary focus of Collings relates to an extruded dog food product that has improved resistance to breakage on shipping and handling and not improved dental cleaning properties, let alone due, at least in part, to the product density. Again, the claimed pet food with a density that ranges from about 16.8 lbs/ft³ to about 20 lbs/ft³ can reduce tartar and plaque build-up when chewed by the pet. This is due, at least in part, to a reduced density or increased sized of the pet food product as previously discussed. Based on at least these reasons, clearly one skilled in the art would consider that Collings is distinguishable from the claimed invention

Even if combinable, Applicants do not believe that the Patent Office can rely solely on Hand to remedy the deficiencies of Collings. Therefore, Applicants believe that the claimed invention is clearly distinguishable over the cited art.

Accordingly, Applicants believe that the anticipation and obviousness rejections be withdrawn.

In the Office Action, claims 1-33 have been provisionally rejected under the obviousness-type double patenting doctrine. More specifically, claims 1-33 have been rejected in view of claims 1-24 of copending U.S. Patent Application No. 09/154,646; in view of claims 1-32 of copending U.S. Patent Application No. 10/052,949; and in view of claims 1-20 of copending U.S. Patent Application No. 09/936,672. As these rejections are provisional, Applicants respectfully submit that they plan to file a Terminal Disclaimer, if necessary, to address the obviousness-type double patenting rejections, if and when, any one or combination thereof of the copending U.S. Patent Applications as discussed above have in fact been patented. Therefore, Applicants believe that they have been responsive to the provisional rejections at least at this stage in the examination of the above-referenced patent application.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204

Dated: December 30, 2003